IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 649 of 2005
To
FIRST APPEAL No. 665 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
BHARATKUMAR HIRABHAI PATEL & 1 - Respondent(s)

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Appearance :
MR VM PANCHOLI, AGP for the Appellants.
MR PM DAVE for Respondent : 1,
None for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 03/05/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

This group of Appeals preferred by the State Government under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as, **"the Act"**) read with

Section 96 CPC arises from the judgment and order dated 5th April, 2003 passed by the learned Joint Civil Judge (S.D.), Panchmahals in Land Acquisition Reference Nos.49/1988 to 61/1988, 267/1988, 268/1988, 7/1989 and 150/1989.

By preliminary notification issued on 22nd August, 1983 under Section 4 of the Act, published in the official gazette on 20th October, 1983 and the declaration dated 7th May, 1984 made under Section 6 of the Act, published in the official gazette on 5th July, 1984, the State Government has acquired certain pieces of lands of village Zalod Ni Muvadi for the purpose of construction of Machhannala Canal. The Land Acquisition Officer declared the award for the said acquired lands on 24th July, 1986. Considering the relative position of each piece of land and other relevant factors the Land Acquisition Officer offered a price ranging from Rs.120=00 per Are to Rs.250=00 per Are. Feeling aggrieved by the inadequacy of the offer made by the State Government, the concerned claimants applied for reference to the District Court under Section 18 of the Act. Accordingly, the above referred References were made to the District Court and were decided by

the learned Civil Judge (S.D.). The learned Civil Judge has awarded an additional sum of Rs.10=00 per sq.meter (Rs.1,000=00 per Are) for each piece of land. Therefore, the present Appeals. The learned Civil Judge has also directed the State Government to pay the amount of statutory increase under Section 23(1) of the Act, the solatium and the interest in accordance with the statutory provisions.

Mr.Pancholi has submitted that the acquired lands were suitable for agricultural purpose alone. The acquired lands had no potential for development in near future. In the submission of Mr.Pancholi the learned Civil Judge has erred in ignoring the location of each piece of land and the fact that the acquired lands were situated far from the developed lands of the town of Zalod. The compensation awarded by the learned Civil Judge is excessive and calls for interference by this Court. In support of his submissions, he has relied upon the judgment of the Hon'ble Supreme Court in the matter of **State of Haryana v/s. Ram Singh** [(2001)6 SCC 254].

The Appeals are contested by Mr.Shah. He has submitted that the learned Civil Judge has rightly awarded additional sum of Rs.10=00 per sq.meter of the acquired lands. He has submitted that the acquired lands are in the vicinity of the municipal limits of the town of Zalod. Since the declaration of award under Section 11 of the Act, the lands of village Zalod Ni Muvadi have been included within the municipal limits of Zalod. In the submission of Mr.Shah, considering the deposition made before the Court and the potential for future development, the enhancement in compensation for the acquired lands is absolutely just and proper. He has submitted that the reference Court is empowered to enhance the market value of the acquired lands in excess of the amount claimed. Mr.Shah has read over the evidence of the claimants (Exhibits 48 to 57) and the evidence of one Patel Bharatbhai Hirabhai (Exh.65), the owner of the lands Survey Nos.295/1, 318/1/B, 545/5 and 576/2 admeasuring 6-Acres 2-Gunthas. He has also read over the sale document (Exh.66) in respect of the land

Survey No.221/1. In support of his submissions, Mr.Shah has relied upon the judgments of the Hon'ble Supreme Court in the matters of **Thakarsibhai Devjibhai and others v/s. Executive Engineer and another** [AIR 2001 SC 2424] and of **V.Subrahmanya Rao v/s. Land Acquisition Zone Officer** [2005(3) SCALE 671].

The Land Acquisition Officer had, by his common award dated 24th July, 1986, determined the price of the lands acquired ranging from Rs.1=20 per sq.meter to Rs.2=50 per sq.meter as recorded hereinabove. The Land Acquisition Officer had observed that the acquired lands were situated away from the municipal limits of Zalod, a taluka town; that the acquired lands were agricultural lands and were not situated in the developed areas; that the railway line passed through Dahod some 35 kms. from Zalod; that Zalod was well connected by bus-routes and had the facility of banks, education institutions, post office, etc.; that the village had the population of 16,136 mainly agriculturists.

In reference before the District Court, the claimants demanded Rs.10=00 per sq.meter of acquired lands or Rs.1,000=00 per Are or Rs.40,000=00 per Acre of land. The claimants had deposed before the learned Civil Judge that the acquired lands were in the vicinity of Zalod having common borders with the States of Rajasthan and Madhya Pradesh; that the lands of the village were later on in the year 1992 merged within the municipal areas of the town of Zalod; that the acquired lands were situated between two rivers, Titodi and Machhannala. The lands were fertile, jirayat lands and that the deponents used to take three crops a year. They deposed that the Zalod town was well-developed, well-connected by roads, had the facility of public transport, nationalised and cooperative banks, post office, educational institutions, health facilities, etc. The areas near the acquired lands had started non-agricultural development and the price of lands were spiralling upward; that the acquired lands had a future potential for non-agricultural development. In connection with the comparable sale instances they particularly relied upon the instances of sale of

lands Survey No.620 sold on 24th October, 1974; Survey No.221/1 sold on 1st May, 1978 and Survey No.606 sold on 14th February, 1985. They relied upon the certified copies of the Index from the office of the Sub-Registrar, Dahod (Exhibits 14, 15, 16, 17, 18 and 19), Sale deed (Exh.66), Revenue Map (Exh.20), Village Forms No.7/12 (Exhibits 21, 22 and 71) and the certificate issued by the Administrator, Municipal Burough, Zalod (Exh.92) declaring that the lands of village Zalod Ni Muvadi were included within the municipal limits of Zalod.

The learned Civil Judge has, by impugned judgment, held that **"...Looking to the said instances produced by the applicants at Exh.14 to 19, it appears that the applicants are entitled to get additional amount of the compensation at the rate of Rs.10/- per Sq.mtr. as prayed by the applicants in the present Land Acquisition Reference."** Accordingly, the learned Civil Judge has directed that the claimants be paid additional Rs.10=00 per sq.meter for acquired lands and that the claimants be paid statutory increase at the rate of 12% per annum as

envisaged by Section 23(1) of the Act, Solatium at the rate of 30%, the statutory interest at the rate of 9% and 15% respectively.

We are of the opinion that the learned Civil Judge has manifestly erred in proceeding on the premise that the claimants had demanded an additional compensation at the rate of Rs.10=00 per sq.meter. The learned Civil Judge has also erred in not considering or weighing the probative value of the evidence on record. What the claimants had demanded before the Reference Court was a compensation of Rs.40,000=00 per Acre or Rs.10=00 per sq.meter less the amount awarded by the Land Acquisition Officer. The learned Civil Judge has also failed to appreciate the relative situation of each piece of land vis-a-vis the sale instances relied upon by the claimants. On perusal of the Revenue Map (Exh.20), it is abundantly clear that the lands acquired were situated at some distance on the east of the Zalod town. Some of the lands were situated far away on south-east of Zalod town while some were situated nearer to Zalod town towards north-east. The

particular sale instances relied upon by the claimants were not within the comparable range. Land Survey No.221/1 was situated on the south of Zalod around 1000 yards away from the municipal limit of Zalod town. It was situated on a junction of three roads leading to Zalod town. A small parcel of the said land admeasuring 228.91 sq.meters was purchased by the claimants in Reference No.55/88 for a sum of Rs.3,000=00. Land Survey No.606 was situated some 600 yards to the east of Zalod town having frontage on the Zalod-Gamdi road. Major part of the said land Survey No.606 had been acquired for the aforesaid Machhannala canal. The remaining 2932 sq.meters of the said land Survey No.606 had been sold in the year 1985 for a sum of Rs.20,000=00 i.e. for a price of less than Rs.7=00 per sq.meter. The land Survey No.620 was a non-agricultural land situated less than 1000 yards on the east of Zalod town having frontage on Zalod-Kushalgadh road.

Of the acquired lands, certain lands which had frontage on the road and were situated nearer to Zalod town (in somewhat developed areas), the Land

Acquisition Officer had awarded compensation at the rate of Rs.2=50 per sq.meter. The lands which were situated farther away in undeveloped areas the price offered was Rs.2=10 per sq.meter to Rs.1=20 per sq.meter. The lands for which the lesser price was offered by the Land Acquisition Officer were situated far away on the south-east of Zalod town.

We are of the opinion that the learned Civil Judge has failed to appreciate the potential of each piece of land and has awarded uniform additional compensation at the rate of Rs.10=00 per sq.meter. The learned Civil Judge has not recorded any reason for arriving at the said price. Nor the learned Civil Judge has recorded any circumstance for which the price in excess of the claim is awarded. Besides, though the deponents claimed that they used to take three crops every year, no evidence had been produced in support thereof except the aforesaid Village Forms (Exhibits 21, 22 and 71). Exhibits 21 and 22 are the Village Form No.7/12 in respect of the lands Survey No.301 paiki and Survey No.605/1 of one Bharatkumar Patel. The said forms disclose that only Kharif crop

(paddy) was taken on the said land. The Village Form No.7/12 (Exh.71) is in respect of the land Survey No.666 of Sarvodaya Cooperative Society. Only a part of the said land was cultivated and Kharif and Ravi crops were taken. Exhibit 66 relied upon by Mr.Shah is the copy of the sale document of the land Survey No.221/1. He has emphasized that of the said land Survey No.221/1 a very small piece of land admeasuring 228.91 sq.meters was sold for a sum of Rs.3,000=00 as far back as in the year 1978 i.e. the price of the land around Zalod town was around Rs.10=00 per sq.meter long before the lands in question were sought to be acquired in the year 1983. The price of Rs.10=00 per sq.meter demanded by the claimants was, in fact, on the lower side considering the price appreciation of the immovable properties. The claimants were entitled to a much higher price.

As recorded hereinabove, the sale instances relied upon by the claimants are in respect of the lands which were smaller in size or which had been put to non-agricultural use and had frontage on one or the other road leading to village Zalod and were situated nearer to Zalod town in the areas which had

started non-agricultural development.

We are of the opinion that the learned Civil Judge has erred in not considering the comparative location of each piece of land. The Appeals are, therefore, required to be allowed. This Court considers that the market price determined by the learned Civil Judge for each piece of land is required to be reduced as under :

Survey Nos.	**Rate per Are (100 sq.mtrs.) in Rs.**
195, 186/1, 188, 319/2, 300paiki, 300, 233/4, 233/3, 245/1, 245/2, 246/2, 247/4K, 244/1, 244/2, 319/1, 296/2, 294/4, 243, 320/1, 320/2, 299/1, 290	500/-
291, 289/2, 589/1, 590, 606	600/-
301paiki, 605/1, 610paiki, 610, 623, 301paiki, 301, 605/2	700/-
625/1, 656, 663/1A, 626, 625/2	800/-
666	900/-
676/2, 663/1A, 663/1B	1000/-

The concerned claimants will be entitled to compensation at the above rate including the compensation awarded by the Land Acquisition Officer. The claimants shall also be entitled to statutory increase @ 12%, solatium and interest on the

additional amount of compensation in accordance with law.

The Appeals are partly allowed to the above extent with proportionate cost.

Registry shall maintain copy of this judgment in each Appeal.

(Anil R.Dave, J.)

(Ms. R.M.Doshit, J.)

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